

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANTS: Mrs Zinelle Pieters
Miss Luma Bella Pieters

CASE NUMBER: 1503094

DIBP REFERENCE(S): CLF2013/129644

MEMBER: Adrienne Millbank

DATE: 2 September 2016

PLACE OF DECISION: Brisbane

DECISION: The Tribunal remits the applications for Partner (Temporary) (Class UK) visas, with the direction that the first named applicant meets the following criteria for a Subclass 820 (Partner (Temporary)) visa:

- cl.820.211(2) of Schedule 2 to the Regulations
- cl.820.221(1) (a) of Schedule 2 to the Regulations.

The second named applicant meets secondary criteria 820.311(a) (i).

1. Statement made on 02 September 2016 at 2:44pm

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision of a delegate of the Minister for Immigration on 12 February 2015 to refuse to grant the applicants Partner (Temporary) (Class UK) visas under s.65 of the *Migration Act 1958* (the Act).
3. Zinelle Pieters, a citizen of South Africa, applied for the visa on 11 June 2013 on the basis of her relationship with her sponsor husband Cecil Marius De Bruyn, an Australian citizen. Included in the sponsorship application was Ms Pieters' (then) six year old daughter, Luma Bella. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit who are applicants for the visa need satisfy only the secondary criteria.
4. The delegate in the Department of Immigration and Border Control advised Ms Pieters that the visa would not be granted on the basis that her application did not contain sufficient information to satisfy cl.820.211 (2) of schedule 2 requirements. That is, she could not be satisfied that the applicant and the sponsor were in a genuine and continuing relationship at time of application because insufficient evidence had been provided to corroborate the relationship. Attempts to contact the applicant had been unsuccessful.
5. On 26 February 2015 Ms Pieters emailed the delegate to request an extension of time to submit the requested documents and other supporting material, apologising that she had been distracted by the demands of the business she had been developing and running with her sponsor husband. The delegate advised Ms Pieters that she was unable to revisit the Department's decision, and referred her to the Tribunal where opportunity would be provided to submit evidence in support of the visa application.
6. On 16 August 2016 the Tribunal requested the applicant to provide evidence that the relationship was at the time of application and remained genuine and on-going, as is required under Australian migration law. Specifically, evidence was requested necessary to satisfy provisions detailed under migration regulation 1.15A relating to: the financial aspects of the relationship; the nature of the household; the social aspects of the relationship; and the nature of her and her sponsor's commitment to each other.
7. Ms Pieters was represented and assisted in relation to the review by her registered migration agent, Mr Andre Pierre Burger.

CONSIDERATION OF CLAIMS AND EVIDENCE

EVIDENCE ON THE DEPARTMENTAL FILE

8. Evidence on the Departmental file relevant to the question of whether the applicant and sponsor were at time of application in a genuine and continuing spousal relationship included:
 - A certified copy of the certificate of Ms Pieters' and Mr De Bruyn's marriage, solemnised on South Stradbroke Island, Queensland 16 December 2010, giving each of their usual addresses the same address in Redland Bay

- A photo of the wedding party, including, besides Ms Pieters' daughter Luma Bella, Mr De Bruyn's two daughters Chloe (born 8 April 2002) and Jodi (born 10 January 2005), from his previous marriage
 - Photos of Mr De Bruyn and Ms Pieters as a couple, mostly with the three girls
 - A certified copy from the Brisbane registry of a change-of-name certificate, registered 17 May 2011, when Luma Bella's family name was changed from Pieters to De Bruyn
 - A certified copy of Ms Pieters' Queensland learner driver's licence, issued 23 March 2011, giving as her address the Redland Bay address
 - A change of address notification to the Redland Bay address dated 16 June 2014 following a passport renewal (on 2 June 2014) for the applicant's daughter Luma Bella, lodged with the Department 26 June 2014
9. Identity documents in the form of certified copies of the South African birth certificates and passports of the applicant Zinelle Pieters (born 1983) and her daughter Luma Bella (born 26 September 2006), and a certified copy of the Australian passport, issued 12 October 2010 of Mr De Bruyn (a dual South African citizen, born 25 April 1972) were attached to the application.
 10. Ms Pieters stated in her application that she first met her sponsor Cecil (Marius) De Bruyn in February 2007 in South Africa, that they began a relationship in January 2009, became committed to a long-term relationship on 14 February 2010, and married in December 2010.
 11. Ms Pieters' first stay in Australia was on a visitor visa 14 December 2008–14 January 2009. She returned on 2 February 2009 and applied for a 457 temporary work visa, which was granted 12 June 2006, valid until 19 June 2013. She applied for a partner visa 11 June 2013.
 12. Mr De Bruyn came to Australia as a skilled independent migrant and took out Australian citizenship 27 September 2010. He has been a director of Newtribe (a fruit and vegetable export business) since October 2006, and since 2011 joint owner and director of the company (now including a café, in Redlands Bay, trading as 'I Love Coffee') with the applicant, Ms Pieters.
 13. Ms Pieters' sponsor has had one previous marriage (in South Africa), which ended in a divorce finalised 8 December 2009. Mr De Bruyn's two children Chloe and Jodi are from this marriage.
 14. In her email of 26 February 2015 to the Departmental delegate requesting an extension of time for the processing of her visa, Ms Pieters stated that her marriage to Mr De Bruyn was in no sense 'bogus'; that they had been living together for over six years; that their children go to the same school, and that they share household costs and responsibilities as a complete family. She stated further that there were credible witnesses who could support these statements.

EVIDENCE PROVIDED TO THE TRIBUNAL

15. Evidence provided to the Tribunal 25 August 2016 relevant to the question of whether the applicant and sponsor were at the time of application and at time of review in a genuine and committed spousal relationship included:
 - Statutory declarations from the sponsor and the applicant dated 4 August 2016 in which they declare: that they met in February 2007; that Mr De Bruyn proposed to

the applicant on Valentine's day 14 February 2010; that they married on 16 December 2010 at South Stradbroke Island; that friends and family attended the wedding; that they have lived together with their children at the Redland Bay address for the past six years; that they regularly attend social events and family functions including church and school sports on Saturdays; that their relationship is known to all of their family and friends; that their marriage is a happy one, and that they look forward to grandchildren and growing old together

- A statutory declaration dated 18 August 2016 from Mr John Golder, the General Medical Practitioner of both the applicant and sponsor, stating that he has known them both for over five years, has seen them together on numerous occasions and believes their relationship to be genuine and continuing
- A statutory declaration dated 18 August 2016 from Ms Teresa McAlpine, whose children go to the same school as the applicant and the sponsor's children and who is familiar with their Redland Bay business, testifying that she has known the applicant and sponsor as a married couple for four years and three months
- A statutory declaration dated 23 August 2016 from Ms Bettina Tampe, a teacher aide, stating that she has known the couple for close to four years; that their families socialise together more than once a week (their daughters being of similar age); that they often have dinner together, and that their families attend church together at Carindale, Citipointe Church
- A company statement for New Tribe Pty Ltd issued 29 May 2015 listing as office holders Cecil Marius De Bruyn and Zinelle Pieters, both of the Redland Bay address; a copy of the De Bruyn family trust, date-of-deed 27 October 2014, in which Cecil Marius and Zinelle de Bruyn are listed as principals and their three daughters as beneficiaries; a March 2015 statement from a joint NAB company account; a statement addressed to Mr De Bruyn from HCF issued 30 July 2015 listing as family covered under the health insurance policy Marius Cecil, Chloe and Jodi De Bruyn and Zinelle and Luma Bella Pieters
- Invoices dated 31 January 2015 addressed to 'Mr C and Mrs Z de Bruyn' at the Redland Bay address from Faith Lutheran College Redlands for all three of their daughters' school fees
- Electricity and other bills and reminders with dates from March 2011 to July 2016 testifying to joint family life addressed to Mr and/or Mrs de Bruyn at the Redland Bay address. These included a registration renewal notice, sent 5 August 2016 by Redland City Council to Zinelle De Bruyn, for Lucy Giovanna, a 'Standard Dog' adopted by the family in 2013
- A Qantas flight itinerary 4-8 July 2015 showing the joint travel to Melbourne of the applicant and sponsor together with all three of their children, consistent with the applicant and sponsor's description of a family holiday to Mt Buller at this time
- Photos of the couple together with friends and family in a range of settings and occasions.

16. In his sworn statement of 4 August 2016, the sponsor stated that he and the applicant were listed as each other's beneficiaries on their superannuation accounts. The applicant's agent, Mr Burger, submitted that further to the evidence provided, the couple shared normal married couple responsibilities and activities including the purchase of household goods, housework, and looking after their children.

17. The sponsor's movement records show that he has travelled overseas frequently, most often without the applicant. The Tribunal finds this travel consistent with the demands of the fruit and vegetable export business Mr De Bruyn has developed since 2006. It accepts the sworn statement of the supporting witness Teresa Mc Alpine that the applicant and sponsor have remained committed as a couple to family and friends 'no matter how busy with their business or Marius' international work travel'.
18. The applicant's movement records indicate that she travelled overseas with the sponsor from late January to mid February 2011, shortly after their marriage, consistent with their reported honeymoon in Europe. They also indicate that she travelled with the sponsor to South Africa in late June and early July 2014, consistent with their reported trip at this time, with their children, to visit family and friends.

FINDINGS

19. From all the evidence presented, the Tribunal finds that the visa applicant and the sponsor were at the time of application and at the time of this decision in a genuine, continuing and exclusive marital relationship, with mutual commitment to a shared family life.
20. The Tribunal is satisfied that the applicant and her sponsor are validly married and meet Schedule 3 requirements regarding visa status. Both the sponsor and applicant are over 18 years of age, and the applicant (and her dependent child) were the holders of substantive visas at the time of application.
21. Therefore the applicant, Zinelle Pieters meets the requirements for a partner visa as set out in cl.820.211(2) and cl.820.221(1) of schedule 2 of the migration regulations.
22. Given the findings above, the appropriate course is to remit the application for the visas to the Minister to consider the remaining criteria for a Subclass 820 visa.

DECISION

23. The Tribunal remits the applications for Partner (Temporary) (Class UK) visas, with the direction that the first named applicant meets the following criteria for a Subclass 820 (Partner (Temporary)) visa:
 - cl.820.211 (2) of Schedule 2 to the Regulations
 - cl.820.221 (1) (a) of Schedule 2 to the Regulations.
 - The second named applicant meets criteria 820.311(a) (i).

Adrienne Millbank
Member

ATTACHMENT - EXTRACT FROM MIGRATION REGULATIONS 1994

1.15A SPOUSE

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).